

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NEWMARK GROUP, INC., G&E
ACQUISITION COMPANY, LLC and BGC
REAL ESTATE OF NEVADA, LLC

Case No. 2:15-cv-00531-RFB-EJY

Plaintiffs,

ORDER

v.

AVISON YOUNG (CANADA) INC.;
AVISON YOUNG (USA) INC.; AVISON
YOUNG-NEVADA, LLC, MARK ROSE,
THE NEVADA COMMERCIAL GROUP,
JOHN PINJUV, and JOSEPH KUPIEC; DOES
1 through 5; and ROE BUSINESS ENTITIES
6 through 10,

Defendants.

Before the Court is Defendants' Motion for Leave to File Exhibits Under Seal and Redact Portions of Opposition to Plaintiffs' Motion to Compel (ECF No. 407).

As explained in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), courts generally recognize a "right to inspect and copy public records and documents, including judicial records and documents." *Id.* at 1178 citing *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978). This right is justified by the interest of citizens who "keep a watchful eye on the workings of public agencies." *Id.* As Defendants know, a party seeking to file a document under seal must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana*. A party seeking to maintain the secrecy of documents attached to dispositive motions must show compelling reasons sufficient to overcome the presumption of public access. *Id.* If a sealing order is permitted, it must be narrowly tailored. *Press-Enterprise Co. v. Superior Ct. of Cal., Riverside Cty.*, 464 U.S. 501, 512 (1984). When a document is attached to a non-dispositive motion, which is the case here, the "public policies that support the right of access to dispositive motions ... do not apply with equal force . . ." *Kamakana*, 447 F.3d at 1179 (citation omitted). "Thus a particularized

1 showing, under the good cause standard of Rule 26(c), will suffice to warrant preserving the secrecy
2 of sealed discovery material attached to non-dispositive motions.” *Id.* at 1180 (citations, quotation
3 marks and brackets omitted).

4 Here, Defendants seek to seal exhibits to an opposition to a non-dispositive motion as well
5 as portions of the opposition itself. Defendants have demonstrated good cause for filing Exhibit B,
6 page Bates Numbered AYNV-108190 and Exhibit E in its entirety. These documents contain
7 confidential or proprietary information the public disclosure of which could result in misuse that
8 would harm Defendants. Defendants have not demonstrated good cause for filing Exhibit B, pages
9 Bates Numbered AYNV-108187-189, or Exhibit C, pages Bates Numbered AYNV-108191-193.
10 Defendants also did not attach Exhibit G to its filing under seal rendering it impossible for the Court
11 to review this document.

12 Accordingly,

13 IT IS HEREBY ORDERED that Defendants’ Motion for Leave to File Exhibits Under Seal
14 and Redact Portions of Opposition to Plaintiffs’ Motion to Compel (ECF No. 407) is GRANTED in
15 part and DENIED in part.

16 IT IS FURTHER ORDERED that Exhibit B, page Bates Numbered AYNV-108190 and
17 Exhibit E in its entirety shall remain sealed.

18 IT IS FURTHER ORDERED that Exhibit B, pages Bates Numbered AYNV-108187-189
19 and Exhibit C, pages Bates Numbered AYNV-108191-193 contain no privileged or confidential
20 information, and nothing the Court can discern that is potentially privileged or confidential. As such,
21 these documents shall be unsealed.

22 IT IS FURTHER ORDERED that Exhibit G to Defendants’ Opposition, identified as the
23 Declaration of Robert Z. Slaughter attaching Exhibits A-E was *not* filed under seal. Therefore,
24 Defendants must either move to strike this filing and refile this document with a request to file under
25 seal or take no action in which case the declaration and exhibits thereto shall remain unsealed.

26 IT IS FURTHER ORDERED that the portions of Defendants’ Opposition to ECF No. 397
27 referring to Exhibit B, page Bates Numbered AYNV-108190, or any portion of Exhibit E shall
28 remain redacted and sealed.

1 IT IS FURTHER ORDERED that Defendants shall file a revised, unsealed and unredacted
2 Opposition to ECF No. 397 removing redactions referencing Exhibit B, Bates Numbered pages
3 AYNV-108187-189, or Exhibit C, Bates Numbered pages AYNV-108191-193.

4 Dated this 13th day of October, 2020

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7 ELAYNA J. YOUCHAK
8 UNITED STATES MAGISTRATE JUDGE
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